



## NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW AND COMMERCIAL REGULATION

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Volume 22 | Number 2

Article 8

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Winter 1997

# Drug Importation in United States v. Ramirez-Ferrer: Does 21 U.S.C. 952 Really Mean from Any Place Outside the United States

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### Recommended Citation

Wayne K. Maiorano, *Drug Importation in United States v. Ramirez-Ferrer: Does 21 U.S.C. 952 Really Mean from Any Place Outside the United States*, 22 N.C. J. INT'L L. & COM. REG. 663 (1996).

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# Drug Importation in United States v. Ramirez-Ferrer: Does 21 U.S.C. 952 Really Mean from Any Place Outside the United States

## **Cover Page Footnote**

International Law; Commercial Law; Law

# **Drug Importation in *United States v. Ramirez-Ferrer*: Does 21 U.S.C. § 952 Really Mean From “Any Place Outside” the United States?**

## **I. Introduction**

Illegal importation of controlled substances is an ever increasing problem for the United States in its “war on drugs,”<sup>1</sup> a war the United States is losing.<sup>2</sup> Every year since 1981 the total federal funds spent on drug enforcement has increased.<sup>3</sup> By 1995, the nation’s drug enforcement budget had risen to 8.3 billion dollars.<sup>4</sup> Nonetheless, the onslaught of drugs being introduced into the United States has not slowed.<sup>5</sup> Of particular concern are the tremendous quantities of cocaine imported each year into the United States, creating a threat to our national security and the safety of the public at large.<sup>6</sup> If the “tide of . . . cocaine flooding across our borders” cannot be stopped, all attempts to control the domestic drug problem are “doomed to failure.”<sup>7</sup>

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<sup>1</sup> See *FBI Chief: U.S. Not Winning Drug War*, UPI, Mar. 30, 1995 (containing testimony of FBI Director Louis Freeh before a Congressional crime subcommittee to outline the United States strategy to fight drugs and violent crime) [hereinafter *FBI Chief*].

<sup>2</sup> See *id.*

<sup>3</sup> See Dick Cady, *New Crackdown on Drugs Turns Into the Same Old Song Again*, INDIANAPOLIS STAR, Feb. 2, 1995, at C01. In 1986, the President’s Commission on Organized Crime reported that drug trafficking was the single most serious organized crime problem facing the United States. See *id.* (citing report released by the President’s Commission on Organized Crime).

<sup>4</sup> See *id.*

<sup>5</sup> A by-product of this onslaught has been the increase in drug related cases in U.S. courts. See *Drug Cases: Overloading Federal Justice System*, USA TODAY (MAGAZINE), Dec. 1995, at 6 (discussing the overwhelming increase of drug related cases on federal court dockets and the resulting increase in prisoner population). Specifically, the federal justice system is strained to capacity due, in large part, to the government’s ongoing fight against the illegal drug trade. See *id.* In 1995, the federal prison system housed over 92,000 drug related offenders, with an additional 10,500 sentenced federal offenders serving out their terms in state and local prisons. See *id.*

<sup>6</sup> See *FBI Chief*, *supra* note 1. An estimated 820 metric tons of cocaine and 314 tons of heroin is produced each year, of which at least an eighth of the world’s cocaine production was seized in the United States in 1994. See *id.*

<sup>7</sup> *FBI Chief*, *supra* note 1 (quoting Drug Enforcement Agency Administrator

In 1970, Congress enacted the Controlled Substances Import and Export Act.<sup>8</sup> Section 952 of this act governs the importation of drugs into the United States.<sup>9</sup> Though the meaning of the term "importation" seems straightforward, it can be disputed in unusual factual situations.<sup>10</sup> Specifically, if controlled substances originating in the United States crossed over non-U.S. territory en route to a final destination within the United States, it could be argued that, because of their domestic origin, they were not imported into the United States. Another plausible interpretation is that, because the substances last traveled through non-U.S. international waters before arriving in the United States, they were imported. It was this issue that the First Circuit faced in *United States v. Ramirez-Ferrer*.<sup>11</sup>

In *Ramirez-Ferrer*, the First Circuit held that when controlled substances were transported from a municipality in Puerto Rico (within U.S. territory), through international waters, to the same municipality (again in U.S. territory), they were not "imported" and therefore did not violate § 952(a).<sup>12</sup> The First Circuit's holding and its analysis of the issue stand in sharp contrast to previous decisions in other circuits that had summarily held that the introduction of drugs into the United States, regardless of the origin of the drugs, constituted importation.<sup>13</sup>

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Thomas Constantine, testifying before a Congressional crime subcommittee to outline the United States strategy to fight drugs and violent crime).

<sup>8</sup> Controlled Substances Import and Export Act, Pub. L. No. 91-1513, 84 Stat. 1285 (codified as amended at 21 U.S.C. §§ 951-971 (1994)). For further treatment of the history and regulation of controlled substances, see Gerald T. McLaughlin, *Cocaine: The History and Regulation of a Dangerous Drug*, 58 CORNELL L. REV. 537, 558-73 (1973) (beginning with early prohibitions to the enactment of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801-966 (1970)).

<sup>9</sup> See 21 U.S.C. § 952 (1994). For a general discussion of 21 U.S.C. § 952, see Michael J. Gardner, *Maritime Drug Smuggling Conspiracies: Criminal Liability For Importation and Distribution*, 27 WM. & MARY L. REV. 217 (1985) (concerning the conflicting approaches taken by the Fourth and Fifth Circuits on evidence necessary to convict a defendant of conspiracy to possess a controlled substance with the intent to distribute when the defendant was also charged with conspiracy to import a controlled substance).

<sup>10</sup> For the statutory definition of the term "importation," see *infra* note 92 and accompanying text.

<sup>11</sup> 82 F.3d 1131 (1st Cir. 1996) (en banc), *cert. denied*, 65 U.S.L.W. 3341 (U.S. Nov. 5, 1996) (No. 96-6134).

<sup>12</sup> See *id.* at 1144.

<sup>13</sup> For a discussion of these previous cases, see *infra* notes 93-145 and

Part II of this Note explores the facts and procedural history of *Ramirez-Ferrer* and discusses the majority and dissenting opinions in this case.<sup>14</sup> Part III examines the relevant background law, including § 952(a) of the Controlled Substances Import and Export Act and past cases interpreting this statute.<sup>15</sup> Part IV discusses the significance of *Ramirez-Ferrer* in the context of its background law.<sup>16</sup> Finally, Part V of this Note concludes that the First Circuit's holding in *Ramirez-Ferrer* is inconsistent with other circuit court precedent, may lead to a narrowing of the application of § 952(a), and, therefore, may result in a less effective "war on drugs" in the United States.<sup>17</sup>

## II. Statement of the Case

### A. Facts

In March 1993, the Police of Puerto Rico (POPR) received information that Felipe Ramirez-Ferrer, Jorge L. Suarez-Maya, and Raul Troche-Matos were going to purchase a quantity of cocaine on Mona Island, Puerto Rico, and transport it by boat to the main island of Puerto Rico.<sup>18</sup> The United States Customs Service and the POPR tracked the boat from Mona Island back towards Puerto Rico and apprehended the boat, with the three men aboard, about one mile from the southwest corner of Puerto Rico.<sup>19</sup> After seizure, the boat was found to be carrying approximately sixteen kilograms of cocaine.<sup>20</sup>

Mona Island is a small island near the mainland of Puerto Rico. This island is geographically part of the Puerto Rico Archipelago and politically part of both the Puerto Rican Senatorial District of Mayaguez and the municipality of Cabo

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accompanying text.

<sup>14</sup> See *infra* notes 18-89 and accompanying text. This Note will only focus on the facts pertinent to the importation charge against defendants under § 952(a).

<sup>15</sup> See *infra* notes 90-145 and accompanying text.

<sup>16</sup> See *infra* notes 146-99 and accompanying text.

<sup>17</sup> See *infra* notes 200-02 and accompanying text.

<sup>18</sup> See *United States v. Ramirez-Ferrer*, 82 F.3d 1131, 1132 (1st Cir. 1996) (en banc), *cert. denied*, 65 U.S.L.W. 3341 (U.S. Nov. 5, 1996) (No. 96-6134).

<sup>19</sup> See *id.* at 1133.

<sup>20</sup> See *id.*

Rico.<sup>21</sup> Although Mona Island (where the cocaine was purchased and the voyage began) is technically within the same Senatorial District and municipality as the southwest corner of Puerto Rico (where the boat was stopped), it is located approximately thirty-nine miles from the main island.<sup>22</sup> Because the boundaries of the United States only extend twelve miles offshore, a vessel must traverse approximately fifteen miles of international water in order to travel from Mona Island to the southwest corner of Puerto Rico.<sup>23</sup>

### *B. District Court*

In March 1993, all three of the men aboard the boat, Ramirez-Ferrer, Suarez-Maya, and Troche-Matos, were charged with importing cocaine into the United States in violation of § 952(a).<sup>24</sup> The defendants were tried in the United States District Court of Puerto Rico and were all found guilty by a jury verdict in September of the same year.<sup>25</sup>

### *C. Court of Appeals*

Initially, the First Circuit reversed the defendants' importation convictions.<sup>26</sup> Subsequently, however, the First Circuit agreed to rehear the case en banc on the issue of the importation statute's interpretation.<sup>27</sup>

The main issue faced by the First Circuit upon rehearing was "whether Congress intended to treat in-transit international waters as a 'place' for purposes of [§ 952(a)] when . . . both the origination and the destination of the controlled substance

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<sup>21</sup> See *id.* at 1132 n.1 (citing P.R. CONST. art. VIII, § 1, IV).

<sup>22</sup> See *id.* at 1133.

<sup>23</sup> See *id.*

<sup>24</sup> See *id.* For a discussion of 21 U.S.C. § 952(a), see *infra* notes 90-92 and accompanying text. Not discussed in this Note are the charges of possession of cocaine with intent to distribute, and possession and carrying of a firearm in relation to a drug trafficking crime. *Ramirez-Ferrer*, 82 F.3d at 1133.

<sup>25</sup> See *Ramirez-Ferrer*, 82 F.3d at 1133. The jury also found the defendants guilty of the possession and firearm charges. See *id.*

<sup>26</sup> See *id.* This opinion has been removed from reporting services at the request of the court. See also *United States v. Ramirez-Ferrer*, Nos. 94-1016 to 94-1018, WL 237041 (1st Cir. Apr. 27, 1995).

<sup>27</sup> See *Ramirez-Ferrer*, 82 F.3d at 1133.

occurred within United States territory.”<sup>28</sup> The government argued that because the defendants traveled through international waters with the cocaine, they brought it into the United States from a “place outside thereof,” thereby violating the importation statute.<sup>29</sup> In response, the defendants argued that, to the contrary, they brought the cocaine from Mona Island, a place clearly within the United States, and, therefore, they were not guilty of “importation” as defined by the statute.<sup>30</sup> In deciding this issue, the court considered the language of the statute, congressional intent, precedent, and the historical application of this statute.<sup>31</sup> Based upon its analysis, the court concluded that the defendants did not violate § 952(a) when they traversed international waters when transporting drugs from “one part of the United States and its customs territory (Mona Island, Puerto Rico) to another (the main island of Puerto Rico).”<sup>32</sup> Therefore, the court reversed the convictions of the defendants.<sup>33</sup>

### 1. *The Majority*

The First Circuit began its analysis in *Ramirez-Ferrer* by examining the language of § 952(a).<sup>34</sup> The government argued that passing over international waters en route from a domestic origination to a domestic destination would be sufficient to support a charge of importation under this statute.<sup>35</sup> The court rejected the government’s argument, noting that the argument assumed that, by focusing on the word “import” in § 952(a) without considering the word “place,” Congress intended to address only on the result of importation, regardless of the place

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<sup>28</sup> *Id.* at 1136.

<sup>29</sup> *See id.* at 1135.

<sup>30</sup> *See id.*

<sup>31</sup> *See id.* at 1135-44

<sup>32</sup> *Id.*

<sup>33</sup> *See id.* at 1135. The court reversed Troche-Matos’ firearm conviction, but affirmed all of the other convictions. *See id.* Circuit Judge Cyr concurred, but hesitated to call the dissent’s arguments “absurd.” *See id.* at 1144 (Cyr, J., concurring). For a discussion of Circuit Judge Boudin’s dissent, which Circuit Justices Selya and Lynch joined, see *infra* notes 71-89 and accompanying text.

<sup>34</sup> *See Ramirez-Ferrer*, 82 F.3d at 1135-39.

<sup>35</sup> *See id.* at 1135.

where the drugs originated.<sup>36</sup> If this were the true interpretation of this statute, the court believed that Congress would have simply prohibited importation "into the United States" rather than importation "from any place outside thereof."<sup>37</sup> Instead, the court determined that for the purpose of § 952(a), the word "place" should be read together with the words "from . . . outside" to focus on the place of origin of the illegal controlled substances.<sup>38</sup>

The First Circuit also compared the second clause of § 952(a), the clause at issue in this case, with the first clause of that section, concluding that the government's interpretation of the former could not be reconciled with a reasonable reading of the latter.<sup>39</sup> The first clause prohibits importation into the customs territory of the United States from any place outside the customs territory, but within the United States, such as the Virgin Islands or Guam.<sup>40</sup> Stating that a statute should be construed so that no part of it is superfluous,<sup>41</sup> the court determined that the government's interpretation of this statute was flawed.<sup>42</sup> If it were accepted, any conduct conceivably addressed by clause 1 would already be addressed by clause 2.<sup>43</sup>

The court also noted that the government's reading of clause 2 would render prosecution under clause 1 impossible.<sup>44</sup> No one could violate clause 1 because, in order to ship from a place within the United States (but outside the customs territory) directly into the customs territory of the United States, the contraband would always be transported directly from international waters.<sup>45</sup> Such conduct would therefore fall within the government's interpretation of clause 2, again rendering clause 1 useless.<sup>46</sup>

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<sup>36</sup> See *id.* at 1136-37.

<sup>37</sup> See *id.* at 1137.

<sup>38</sup> See *id.*

<sup>39</sup> See *id.* at 1137-39.

<sup>40</sup> See *id.* at 1137.

<sup>41</sup> See *id.*

<sup>42</sup> See *id.* at 1138

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

<sup>46</sup> See *id.*



In addition, the court commented that Congress could have extended the conduct prohibited in clause 1 to include the conduct of the defendants in the present case, but instead chose to restrict clause 1 to importation into the customs territory of the United States from a point in the United States but outside the customs territory.<sup>47</sup> Because Congress did not, the court concluded that in the enactment of § 952, Congress was confronting the “classic cases of importation—meaning international importation, not domestic transportation, of drugs”<sup>48</sup>—and did not, therefore, intend by § 952(a) to prohibit the activity of the defendants.<sup>49</sup>

Noting that there was no legislative history on point, the court rejected the dissent’s claim that Congress did not care about the origin of the drugs, so long as they crossed the United States boundary.<sup>50</sup> The court countered that Congress could in fact have been concerned about the origin of the drugs.<sup>51</sup> Stressing the lack of legislative history, the court declined to use what it deemed speculative assertions of congressional intent to justify a “strained” reading of this statute.<sup>52</sup>

Having analyzed the statutory language of § 952(a), the court then considered previous courts’ interpretations of this statute.<sup>53</sup> The court first focused on *United States v. Peabody*<sup>54</sup> because it was relied upon most heavily by the government and was the seminal authority for other cases that followed.<sup>55</sup> Because the contraband in *Peabody* did not originate in the United States, the *Ramirez-Ferrer* court concluded that any pronouncements on contraband originating in the United States based upon *Peabody* were dicta; thereby rendering “*Peabody* and its progeny flimsy precedent upon which to hang one’s hat.”<sup>56</sup>

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<sup>47</sup> See *id.* at 1139.

<sup>48</sup> *Id.*

<sup>49</sup> See *id.*

<sup>50</sup> See *id.* at 1147 (Boudin, J., dissenting).

<sup>51</sup> See *id.* at 1139.

<sup>52</sup> See *id.* at 1139-40.

<sup>53</sup> See *id.* at 1140-41.

<sup>54</sup> 626 F.2d 1300 (5th Cir. 1980). For a more detailed discussion of *Peabody*, see *infra* notes 108-13 and accompanying text.

<sup>55</sup> See *Ramirez-Ferrer*, 82 F.3d at 1140.

<sup>56</sup> *Id.*

Distinguishing the facts of *Ramirez-Ferrer* from other cases relied upon by the government,<sup>57</sup> the court found that only the facts in *United States v. Perez*<sup>58</sup> approximated those at issue in *Ramirez-Ferrer*.<sup>59</sup> Because the *Perez* court based its holding on *Peabody* and its progeny without other support, the First Circuit found that the ruling in *Perez* amounted to no more than "bald assertions without analysis,"<sup>60</sup> and, therefore, did not control the court's decision in *Ramirez-Ferrer*.<sup>61</sup>

Finally, the court looked at the historical application of § 952(a).<sup>62</sup> The court pointed to the thousands of individuals who would be at risk of conviction under the government's interpretation of § 952(a)—including, for example, a passenger on a commercial whale watching vessel who happened to travel into international waters and then re-entered domestic waters; commercial fishermen who cross into international waters; and leisure boaters "tacking" up the eastern coast.<sup>63</sup> The court also noted that, according to the government's argument, each re-entry into the United States from international waters would be subject to border crossing rules.<sup>64</sup> These possibilities, the existence of drug possession statutes addressing domestic conduct, and the lack of previous governmental use of 952(a) in the manner advocated in this case<sup>65</sup> convinced the court that the government's positions directly conflicted with the statute's historical application.<sup>66</sup>

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<sup>57</sup> See *id.* at 1140-41 (discussing *United States v. Phillips*, 664 F.2d 971 (5th Cir. 1981); *United States v. Lueck*, 678 F.2d 895 (11th Cir. 1982); *United States v. Goggin*, 853 F.2d 843 (11th Cir. 1988); *United States v. Doyal*, 473 F.2d 271 (5th Cir. 1971); *United States v. Friedman*, 501 F.2d 1352 (9th Cir. 1974)). For a more detailed discussion of these cases, see *infra* notes 93-147 and accompanying text.

<sup>58</sup> 776 F.2d 797 (9th Cir. 1985). For a more detailed discussion of *Perez*, see *infra* notes 124-31.

<sup>59</sup> See *Ramirez-Ferrer*, 82 F.3d at 1141.

<sup>60</sup> *Id.*

<sup>61</sup> See *id.*

<sup>62</sup> See *id.* at 1141-44.

<sup>63</sup> See *id.* at 1142.

<sup>64</sup> See *id.* at 1142-43.

<sup>65</sup> The court noted that "[t]he government has failed to cite even *one* case in this circuit . . . in which a defendant was even charged . . . in the manner now claimed." *Id.* at 1143.

<sup>66</sup> See *id.* at 1142-43.

The court held there cannot be a conviction for importation under § 952(a) absent any evidence from which the jury could infer that the drugs originated or emanated from some “place” outside the United States.<sup>67</sup> Furthermore, the court noted that “the defendant can defeat an importation charge by demonstrating affirmatively by competent evidence that the drugs came into the United States directly from another place . . . within the United States.”<sup>68</sup> As a result, the court concluded that the undisputed evidence in *Ramirez-Ferrer* showed that the drugs originated within the United States and were transported directly to another place within the United States.<sup>69</sup> The First Circuit therefore reversed the defendants’ conviction for importation under § 952(a).<sup>70</sup>

## 2. *The Dissent*

The dissent vehemently disagreed with the majority’s reasoning in *Ramirez-Ferrer*, claiming that the decision conflicted with the wording of § 952(a), uniform circuit precedent, and the intent underlying the statute.<sup>71</sup>

First, the dissent disputed the court’s statutory analysis of § 952(a).<sup>72</sup> Noting that § 952(a) prohibits importation of drugs into the United States “from any place outside thereof,” and that import is defined for purposes of § 952(a) as “any bringing in or introduction of such article into any area,” the dissent concluded that international waters were a “place” outside the United States.<sup>73</sup> Because “the statute says nothing about where the defendants first acquired their drugs,”<sup>74</sup> and the term import is defined in relation to destination, not origin, the dissent argued that the phrase “place outside thereof” certainly would include international waters.<sup>75</sup>

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<sup>67</sup> See *id.* at 1144.

<sup>68</sup> *Id.*

<sup>69</sup> See *id.*

<sup>70</sup> See *id.*

<sup>71</sup> See *id.* at 1144–48 (Boudin, J., dissenting).

<sup>72</sup> See *id.* at 1145–46 (Boudin, J., dissenting).

<sup>73</sup> *Id.* at 1145 (Boudin, J., dissenting).

<sup>74</sup> *Id.* (Boudin, J., dissenting).

<sup>75</sup> See *id.* (Boudin, J., dissenting).

The dissent further asserted that this interpretation of the second clause of § 952(a) would not render the first clause of that section superfluous because of the geographic content of the first clause.<sup>76</sup>

Second, the dissent disagreed with the majority's assertion that *Ramirez-Ferrer* was distinguishable from the relevant precedent.<sup>77</sup> The dissent cited numerous decisions upholding convictions under § 952(a) where the drugs originated in the United States, were taken outside of the United States, and were later returned to the United States.<sup>78</sup> In particular, the dissent relied upon the holdings in *United States v. Peabody*,<sup>79</sup> *United States v. Goggin*,<sup>80</sup> and *United States v. Perez*,<sup>81</sup> all of which state explicitly that introduction of controlled substances from international waters or international airspace is a violation of § 952(a).<sup>82</sup> The dissent also referred to the case of *United States v. Doyal*<sup>83</sup> to emphasize that the U.S. origin of drugs is not a defense if the drugs are subsequently removed from the United States and then reintroduced.<sup>84</sup>

Finally, the dissent argued that the majority's narrow construction of the statute failed to adhere to the likely intent of Congress.<sup>85</sup> Noting that the President's purpose when he proposed this legislation was to protect the United States' borders and to intercept drugs at their point of illegal entry into the United States,<sup>86</sup> the dissent concluded that Congress was likely more

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<sup>76</sup> See *id.* at 1146. (Boudin, J., dissenting).

<sup>77</sup> See *id.* at 1146-47 (Boudin, J., dissenting).

<sup>78</sup> See *id.* at 1147 (Boudin, J., dissenting).

<sup>79</sup> 626 F.2d 1300, 1301 (5th Cir. 1980) ("Had [the] cargo or contraband originated in, say, Texas, that would not alter the fact that it was meant to reenter the United States from international waters. That is enough.").

<sup>80</sup> 853 F.2d 843, 845 (11th Cir. 1988) (It is importation to bring cocaine "into the country from international waters or airspace in excess of twelve geographical miles outward from the coast.").

<sup>81</sup> 776 F.2d 797, 800-01 (9th Cir. 1985) ("[T]ransit through international waters" is a basis for importation.).

<sup>82</sup> See *Ramirez-Ferrer*, 82 F.3d at 1147 (Boudin, J., dissenting).

<sup>83</sup> 437 F.2d 271, 275 (5th Cir. 1971) ("[E]ach time the drug was imported into the United States a violation would occur.").

<sup>84</sup> See *Ramirez-Ferrer*, 82 F.3d at 1147 (Boudin, J., dissenting).

<sup>85</sup> See *id.* at 1147-48 (Boudin, J., dissenting).

<sup>86</sup> See *id.* (Boudin, J., dissenting) (citing 1969 PUBLIC PAPERS OF THE PRESIDENTS

concerned with interdicting illegal drugs than determining the origin of such drugs.<sup>87</sup> Though there was no legislative history concerning the provisions at issue, the dissent asserted that “[t]he legislators had no reason to care one whit whether the drugs were brought from international waters or from a foreign land, so long as they crossed the U.S. boundary. Indeed, Congress’ indifference to origins is reflected three times over: in its expressed purpose to protect our ‘borders,’ in the expansive phrase ‘from any place outside thereof,’ and in a companion statute making it unlawful for anyone to possess prohibited drugs on board a vessel ‘arriving’ in the United States . . . .”<sup>88</sup> Ultimately, the dissent concluded that the convictions of the defendants under § 952(a) should have been affirmed.<sup>89</sup>

### III. Background Law

#### *A. Statutory Law: 21 U.S.C. § 952(a)*

At the heart of the *Ramirez-Ferrer* decision is the First Circuit’s interpretation of the Controlled Substances Import and Export Act.<sup>90</sup> Section 952(a) of the Act provides that “[i]t shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance . . . or any illegal narcotic . . . .”<sup>91</sup> In *Ramirez-Ferrer*, it was the meaning of the term “import” that was at issue.

Section 951(a)(1) of the Controlled Substances Import and Export Act defines the term import, for the purpose of the Act, to mean “any bringing in or introduction . . . into any area (whether or not such a bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).”<sup>92</sup> The phrase “place outside thereof” is not, however, defined. As a

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OF THE UNITED STATES 513 (1969) (Presidential message)).

<sup>87</sup> See *id.* at 1148 (Boudin, J., dissenting).

<sup>88</sup> *Id.* (Boudin, J., dissenting) (citing 21 U.S.C. § 955 (1970)).

<sup>89</sup> See *id.* (Boudin, J., dissenting).

<sup>90</sup> 21 U.S.C. §§ 951-971 (1994).

<sup>91</sup> 21 U.S.C. § 952(a) (1994).

<sup>92</sup> 21 U.S.C. § 951(a)(1) (1994).

result, it is unclear whether the statute is most concerned with the "place from outside thereof" from which the drugs originated, or the act of "introduction" into the area of the United States. Without legislative history to guide them, courts were left to face this issue on their own.

*B. Circuit Precedent: "The Usual Suspects"*<sup>93</sup>

Even without clear statutory guidance, courts have been remarkably uniform in their interpretation of § 952(a) in cases involving the importation of illegal drugs from international waters and re-importation of illegal drugs originating in the United States. Not only have other courts unanimously concluded that importation from international waters and re-importation of drugs of United States origin violate § 952(a); they have also failed to discuss this issue in any depth.

*1. Fifth Circuit*

One of the first Fifth Circuit cases to consider the issue of re-importation was *United States v. Williams*.<sup>94</sup> The defendant in *Williams* carried hashish from the United States into Mexico and then back into the United States.<sup>95</sup> Though the statute at issue in this case was a customs statute,<sup>96</sup> the court nonetheless found itself constructing the meaning of the term "import."<sup>97</sup> Rejecting the defendant's argument that drugs of U.S. origin could not be imported, the court held that "one who takes hashish out of the country and returns with the hashish in his possession without a declaration thereof to Customs Agents is subject to prosecution for illegal importation" and affirmed the defendant's customs conviction.<sup>98</sup>

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<sup>93</sup> The majority in *Ramirez-Ferrer* stated that the court in *United States v. Perez*, 776 F.2d 797 (9th Cir. 1985), in its decision to uphold a conviction for importation under § 952(a), had "merely 'rounded up the usual suspects'" in its selection of cases to consider as precedent. *Ramirez-Ferrer*, 82 F.3d at 1141.

<sup>94</sup> 435 F.2d 1001 (5th Cir. 1970).

<sup>95</sup> See *id.* at 1002.

<sup>96</sup> 21 U.S.C. § 176(a) (1994).

<sup>97</sup> See *Williams*, 435 F.2d at 1002.

<sup>98</sup> *Id.* at 1002-03.

The Fifth Circuit in *United States v. Doyal*<sup>99</sup> faced a similar issue.<sup>100</sup> In this case, the defendant had purchased cocaine in the United States, transported it to Mexico and then tried to re-enter the United States.<sup>101</sup> This case was brought under another customs statute,<sup>102</sup> but the meaning of term “import” was again the main focus of the court.<sup>103</sup> The court rejected the defendant’s claim that cocaine acquired in the United States could subsequently be removed from and then returned to the United States.<sup>104</sup> The court feared that if such a reading of the statute was adopted, “a person who had previously smuggled an illegal drug into this country without detection . . . , departed and then returned with the drug, . . . could illicitly import it under the guise of it being his Mother’s tablecloth or could refuse to declare it at all and be free of guilt.”<sup>105</sup> Without further analysis, the court concluded that “it would make no difference if the drug were taken out and brought back into the United States a number of times” because “each time the drug was imported into the United States a violation would occur.”<sup>106</sup> The court affirmed the defendant’s customs conviction.<sup>107</sup>

In *United States v. Peabody*,<sup>108</sup> the Fifth Circuit considered the sufficiency of evidence needed to uphold a conviction of conspiracy to import illegal drugs.<sup>109</sup> In this case, the defendants were apprehended in international waters aboard a forty-foot sailboat hauling marijuana.<sup>110</sup> The court abruptly dismissed the defendants’ claims that the evidence was insufficient to support the charge of intent to import, concluding that “[i]t [was] not

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<sup>99</sup> 437 F.2d 271, 275 (5th Cir. 1971).

<sup>100</sup> See *id.* at 273.

<sup>101</sup> See *id.* at 272-73.

<sup>102</sup> 21 U.S.C. § 174 (1961).

<sup>103</sup> See *Doyal*, 437 F.2d at 274-75.

<sup>104</sup> See *id.* at 275.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> See *id.*

<sup>108</sup> 626 F.2d 1300 (5th Cir. 1980).

<sup>109</sup> See *id.* The court did not cite the statute upon which this conviction was based.  
See *id.*

<sup>110</sup> See *id.* at 1300.

disputed that the [defendants'] marijuana was bound for a United States berth" because the defendants "were apprehended outside the country, heading in."<sup>111</sup> Though the origin of the drugs was not determined nor made an issue by the court, the court commented in dicta that "had the cargo of contraband originated in, say, Texas, [it] would not [have] alter[ed] the fact that it was meant to re-enter the United States from international waters."<sup>112</sup> Because the court found the evidence to be sufficient, the defendants convictions were affirmed.<sup>113</sup>

The first case in which the Fifth Circuit specifically considered illegal importation under § 952(a) of the Controlled Substances Import and Export Act was *United States v. Phillips*.<sup>114</sup> The defendants in that case were charged with importing marijuana found in a house in Florida.<sup>115</sup> Their conviction was based upon testimony that the illegal drugs had been brought to Florida from a "mother-ship" off the coast that had originally brought the drugs from Columbia.<sup>116</sup> Describing the proof required to show importation, the court concluded that "evidence that a boat from which marijuana was unloaded went outside United States territorial waters or met with any other vessel that had, for example, a 'mother ship'" was sufficient to sustain a conviction of illegal importation under § 952(a).<sup>117</sup> Once again, the court upheld the defendants' convictions.<sup>118</sup>

## 2. Ninth Circuit

One of the earlier Ninth Circuit decisions on illegal importation under § 952(a) was *United States v. Friedman*.<sup>119</sup> As was the case in *Williams* and *Doyal*, the defendant in this case crossed the border from Arizona into Mexico with cocaine and

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<sup>111</sup> *Id.* at 1301.

<sup>112</sup> *Id.*

<sup>113</sup> *See id.*

<sup>114</sup> 664 F.2d 971 (5th Cir. 1981).

<sup>115</sup> *See id.* at 1033.

<sup>116</sup> *See id.*

<sup>117</sup> *Id.*

<sup>118</sup> *See id.*

<sup>119</sup> 501 F.2d 1352 (9th Cir. 1974).



then later tried to re-enter the United States with the same cocaine.<sup>120</sup> The defendant contested his § 952(a) conviction by citing previous cases that had held that reintroduction of drugs of U.S. origin into the United States did not constitute importation if specific intent was lacking.<sup>121</sup> The court, however, distinguished these decisions by noting that they were based on the violation of customs laws, not § 952(a), and that for the purpose of § 952(a), importation should be interpreted without reference to customs law.<sup>122</sup> For that reason, the court held that the evidence was sufficient to support a conviction under § 952(a) and, therefore, affirmed the defendant's conviction.<sup>123</sup>

In *United States v. Perez*,<sup>124</sup> the Ninth Circuit again considered the issue of illegal importation under § 952(a).<sup>125</sup> The defendant in *Perez* transported marijuana from the island of Rota in the Mariana Islands to the neighboring island of Guam.<sup>126</sup> As did the *Friedman* defendant, *Perez* argued against his conviction on the basis that the drugs originated in the United States.<sup>127</sup> The court cautioned that "[a]lthough Rota is part of the United States, it is still possible that transporting drugs from Rota to Guam is a crime under 21 U.S.C. § 952 if such transportation involves leaving the territorial limits of the United States and then reentering."<sup>128</sup> Because "all that need be proved is that the contraband cruised international waters," the court felt that it was "necessarily irrelevant that [the] drugs may have originated in the United States."<sup>129</sup> The court concluded that because "transit through international waters"<sup>130</sup> was involved, the defendant therefore violated § 952(a) and was guilty of illegal importation.<sup>131</sup>

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<sup>120</sup> See *id.* at 1353.

<sup>121</sup> See *id.*

<sup>122</sup> See *id.* at 1353-54.

<sup>123</sup> See *id.* 1354.

<sup>124</sup> 776 F.2d 797 (9th Cir. 1985).

<sup>125</sup> See *id.* at 797.

<sup>126</sup> See *id.* at 800.

<sup>127</sup> See *id.*

<sup>128</sup> *Id.* at 801.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> See *id.*

#### 4. *Eleventh Circuit*

In *United States v. Lueck*,<sup>132</sup> the Eleventh Circuit considered whether jury instructions describing "a place outside the United States," for the purpose of § 952(a), include "airspace in excess of twelve geographic miles seaward from the east coast of Florida," that is, include international airspace.<sup>133</sup> The defendant had flown illegally from international waters into Florida, at night, in a small plane<sup>134</sup> with marijuana and methaqualone aboard.<sup>135</sup> The defendant appealed from a conviction of illegal importation under § 952(a), claiming that the jury's instruction was overbroad.<sup>136</sup> Because "[a]ny point outside [the] twelve mile limit of airspace and waters constitutes 'a place outside the United States' for purposes of proving importation under § 952(a)," the court held that "the fact of crossing the boundary of the United States with contraband [alone] suffices to establish importation."<sup>137</sup> Citing *Peabody*, the court again re-iterated that "[h]ad their cargo of contraband originated in, say, Texas, that would not alter the fact that it was meant to re-enter the United States from international waters."<sup>138</sup> As a result, it upheld the defendant's conviction for illegal importation.<sup>139</sup>

Recalling its *Lueck* analysis, the Eleventh Circuit again considered § 952(a) in *United States v. Goggin*.<sup>140</sup> The defendants had flown a plane that dropped packages of cocaine onto a remote field in Florida.<sup>141</sup> At issue was not the meaning of the term "importation," but the sufficiency of the evidence showing that the defendants' plane had in fact been over international airspace to support a conviction under § 952(a).<sup>142</sup> The court re-iterated, as a

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<sup>132</sup> 678 F.2d 895 (11th Cir. 1982).

<sup>133</sup> *Id.* at 904-05.

<sup>134</sup> *See id.* at 896-98.

<sup>135</sup> *See id.* at 898.

<sup>136</sup> *See id.* at 905.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *See id.*

<sup>140</sup> 853 F.2d 843 (11th Cir. 1988).

<sup>141</sup> *See id.* at 844.

<sup>142</sup> *See id.* at 844-46.

preliminary matter, that “the government need not demonstrate a specific point on foreign soil from which the cocaine originated to establish a violation of § 952(a).”<sup>143</sup> Instead, to prove illegal importation, the court required only a “showing that the defendant brought cocaine into the country from international waters or airspace . . . .”<sup>144</sup> After reviewing the evidence presented in this case, the court upheld the defendants’ conviction under § 952(a).<sup>145</sup>

#### IV. Analysis

The majority in *Ramirez-Ferrer* hinged its statutory interpretation of § 952(a) on the plain meaning of the word “place.”<sup>146</sup> As a result, the majority determined that merely passing over international waters en route from a domestic point of origin to a domestic destination did not constitute “importation.”<sup>147</sup> The majority rejected the government’s and the dissent’s contention that the plain meaning of the statute, congressional intent, and precedent were not concerned with the point of origin of the drugs, so long as a showing could be made that they had entered the United States from a point outside.<sup>148</sup>

##### A. The Statute

By determining that the plain meaning of the word “place” required proof that the illegal drugs originated from foreign soil, the majority disregarded the fact that Congress defined “import” as “any bringing in or introduction of.”<sup>149</sup> The majority also failed to resolve the statute’s silence on a required showing of a place of origin, although the statute does state a specific destination—the United States.<sup>150</sup> Nor does the majority address the statutory definition of United States, which in pertinent part is “all places

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<sup>143</sup> *Id.* at 845.

<sup>144</sup> *Id.*

<sup>145</sup> *See id.* at 845-46.

<sup>146</sup> *See United States v. Ramirez-Ferrer*, 82 F.3d 1131, 1137 (1st Cir. 1996) (en banc), *cert. denied*, 65 U.S.L.W. 3341 (U.S. Nov. 5, 1996) (No. 96-6134).

<sup>147</sup> *See id.*

<sup>148</sup> *See id.*

<sup>149</sup> *See* 21 U.S.C. § 951(a)(1) (1994).

<sup>150</sup> *See* 21 U.S.C. § 952(a) (1994).

and waters . . . subject to the jurisdiction of the United States.”<sup>151</sup>

The majority also stated that a valid reason for accepting an interpretation of a statute is the reasonableness of the result, in contrast to the unreasonable results reached by alternative readings of the statute.<sup>152</sup> The majority claimed that if the government’s interpretation was accepted, any shipment into the United States traversing international waters or airspace would violate the second clause of § 952(a).<sup>153</sup> As a result, the first clause of § 952(a) would be rendered superfluous.<sup>154</sup> The majority believed this was both an unreasonable and improper result under standard statutory interpretation.<sup>155</sup>

In addition, courts have held that the purpose of § 952(a) is to eliminate the trafficking of controlled substances and narcotics in the United States by restricting importation.<sup>156</sup> It should, therefore, “make no difference if the drugs were taken out and brought back into the United States, even if done a number of times; each time the drugs were [transported back] into the United States a violation of the statute [should] occur.”<sup>157</sup>

#### *B. The Precedent*

The majority’s approach was also inconsistent with the precedent applying § 952(a). The *Ramirez-Ferrer* court was critical of the precedent from other circuits, finding it to be without support, inapposite, or merely dicta.<sup>158</sup> The court dismissed the language in several cases as dicta.<sup>159</sup> Primarily, the court asserted that reliance on *Peabody*<sup>160</sup> would be “particularly flawed”<sup>161</sup> because the *Peabody* court was not concerned with the

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<sup>151</sup> 21 U.S.C. § 802(28) (1994).

<sup>152</sup> See *Ramirez-Ferrer*, 82 F.3d at 1143 (quoting *United States v. Bayko*, 774 F.2d 516 (1st Cir. 1985)).

<sup>153</sup> See *id.* at 1137.

<sup>154</sup> See *id.* at 1138.

<sup>155</sup> See *id.* at 1137.

<sup>156</sup> *United States v. Doyal*, 437 F.2d 271, 275 (5th Cir. 1971).

<sup>157</sup> *Id.*

<sup>158</sup> See *Ramirez-Ferrer*, 82 F.3d at 1140-41.

<sup>159</sup> See *id.* at 1140.

<sup>160</sup> *United States v. Peabody*, 626 F.2d 1300 (5th Cir. 1980).

<sup>161</sup> *Ramirez-Ferrer*, 82 F.2d at 1140.

origin of the controlled substances.<sup>162</sup> Furthermore, the majority distinguished *Ramirez-Ferrer* from *Phillips*.<sup>163</sup> In *Phillips*, the drugs seized were brought directly from Columbia through “mother ships” off the Florida coast.<sup>164</sup> The *Ramirez-Ferrer* court concluded that these decisions had not addressed the same issue as the court was confronted with in *Ramirez-Ferrer*.<sup>165</sup>

Moreover, the majority found the circumstances and evidence in several other cases to be distinguishable from those in *Ramirez-Ferrer*.<sup>166</sup> The court found critical the evidence in *Lueck*<sup>167</sup> and *Goggin*<sup>168</sup> that the defendants were spotted and tracked while flying an aircraft from over the Bahamas (international airspace) into domestic airspace.<sup>169</sup> In contrast, the court pointed to the evidence in *Ramirez-Ferrer* that showed the drugs originated from within the United States.<sup>170</sup> In considering the *Doyal*<sup>171</sup> and *Friedman*<sup>172</sup> cases, the *Ramirez-Ferrer* court found significant the fact that the defendants were apprehended while transporting the drugs into the United States from foreign soil, rather than merely traversing international waters as in *Ramirez-Ferrer*. The court believed that under the facts of those cases a finding in *Ramirez-Ferrer* of importation was justified.<sup>173</sup>

The court did acknowledge that *Perez*<sup>174</sup> squarely held that transit through international waters was sufficient to sustain an importation charge under § 952(a).<sup>175</sup> In *Perez*, the defendant

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<sup>162</sup> See *Peabody*, 626 F.2d at 1300-01.

<sup>163</sup> *United States v. Phillips*, 664 F.2d 971 (5th Cir. 1981).

<sup>164</sup> *Id.* at 1033.

<sup>165</sup> See *Ramirez-Ferrer*, 82 F.3d at 1140.

<sup>166</sup> See *id.*

<sup>167</sup> *United States v. Lueck*, 678 F.2d 895 (11th Cir. 1982), *reh'g denied*, 695 F.2d 566 (11th Cir. 1982).

<sup>168</sup> *United States v. Goggin*, 853 F.2d 843 (11th Cir. 1988)).

<sup>169</sup> See *Ramirez-Ferrer*, 82 F.3d at 1140.

<sup>170</sup> See *id.*

<sup>171</sup> *United States v. Doyal*, 437 F.2d 271 (5th Cir. 1971).

<sup>172</sup> *United States v. Friedman*, 501 F.2d 1352 (9th Cir. 1974), *cert. denied*, 419 U.S. 1054 (1974).

<sup>173</sup> See *Ramirez-Ferrer*, 82 F.3d at 1136 n.3, 1140.

<sup>174</sup> *United States v. Perez*, 776 F.2d 797 (9th Cir. 1985).

<sup>175</sup> See *Ramirez-Ferrer*, 82 F.3d at 1140.

transported drugs from the island of Rota in the Mariana Islands to Guam, traversing international waters between the two.<sup>176</sup> The court noted a difference between *Perez* and *Ramirez-Ferrer*, namely that in *Ramirez-Ferrer* the place of origin and of destination were within the same jurisdiction and municipality.<sup>177</sup> The majority, however, did not feel these circumstances existed in *Perez*.<sup>178</sup> In addition, the court noted the factual similarities between *Ramirez-Ferrer* and the Ninth Circuit's holding in *Perez*, but was not convinced the result in *Perez* was correct.<sup>179</sup> The *Ramirez-Ferrer* court was critical of the Ninth Circuit's lack of reasoning and, therefore, was unpersuaded as to the significance of the *Perez* decision, despite the factual resemblance.<sup>180</sup>

Although the precedent does not offer an in-depth analysis justifying the application of § 952 in circumstances analogous to those in *Ramirez-Ferrer*, it offers a more certain outcome. The precedent does not require the court to perform mental acrobatics in determining the actual origin of the drugs. Instead, it focuses only on the entry into the United States from some "place outside thereof."

As a result, the dissent's reliance on precedent is well-founded. Circuit precedent cited in *Ramirez-Ferrer* arguably supports a violation of § 952(a) under the circumstances in *Ramirez-Ferrer*. Although this precedent was not controlling authority for the First Circuit, the majority in *Ramirez-Ferrer* took liberties in applying its own reasoning, thereby creating a conflict in interpretation where there was none before. The *Ramirez-Ferrer* court found it "difficult to accept that Congress intended the government's reading of § 952(a), considering that this reading of the statute has somehow lain lifeless for 25 years . . . ."<sup>181</sup>

The dissent's attempt to counter the majority's analysis of § 952(a), however, was not entirely convincing. While the dissent relied on several cases to justify that international waters is a

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<sup>176</sup> See *Perez*, 776 F.2d at 797.

<sup>177</sup> See *Ramirez-Ferrer*, 52 F.3d at 1141 n.10.

<sup>178</sup> See *id.*

<sup>179</sup> See *id.* at 1141.

<sup>180</sup> See *id.* at 1140.

<sup>181</sup> *Id.* at 1141.

“place” under § 952(a),<sup>182</sup> its illustration of an appropriate application of clause 1 did not square with the precedent’s reliance on § 952(a). The precedent’s application of § 952(a) focused on the fact that the vessel or aircraft entered domestic territory from a place outside thereof, not concerning itself with the departure point of the vessel or aircraft.<sup>183</sup> The dissent’s example of prohibited conduct under clause 1 referred to a defendant who transported drugs through international airspace from a United States possession to a United States customs territory.<sup>184</sup> The dissent, however, and counter to their own argument, questioned whether a non-stop flight between two United States points could ever be treated as importation.<sup>185</sup>

Although the geographic content in the first clause allows the example to effectively demonstrate that the first clause is not superfluous,<sup>186</sup> both the majority and the dissent create unexplained distinctions. The conflict arose because the dissent (and the precedent) explicitly relied on the language within the second clause of § 952(a) to prohibit the transportation of drugs through international waters. In its example, however, the dissent implied a difference between the two flights.<sup>187</sup> The reasoning of the majority and that of the dissent seem to create more ambiguity in the application of the statute than they resolve.<sup>188</sup>

### C. *The Results*

Even though the dissent’s interpretation of § 952(a) is not entirely satisfying, the majority’s reading of this statute may lead to undesirable and counterintuitive results. The majority draws a

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<sup>182</sup> See *id.* at 1146-1147 (Boudin, J., dissenting) (citing *United States v. Lueck*, 678 F.2d 895 (11th Cir. 1982); *United States v. Goggin*, 853 F.2d 843 (11th Cir. 1988)).

<sup>183</sup> See, e.g., *United States v. Friedman*, 501 F.2d 1352 (9th Cir. 1974), *cert. denied*, 419 U.S. 1054 (1974); *United States v. Perez*, 776 F.2d 797 (9th Cir. 1985); *United States v. Lueck*, 678 F.2d 895 (11th Cir. 1982).

<sup>184</sup> See *Ramirez-Ferrer*, 82 F.3d at 1146 (Boudin, J., dissenting).

<sup>185</sup> See *id.* (Boudin, J., dissenting).

<sup>186</sup> See *id.* (Boudin, J., dissenting).

<sup>187</sup> See *id.* (Boudin, J., dissenting).

<sup>188</sup> Even the majority agreed with the dissent, that if a day hiker happened to cross the border into Canada and back into the United States, while carrying drugs, she would be in violation of the statute. See *id.* at 1136. The majority stated this “obviously would be entering U.S. territory from a ‘place outside thereof.’” *Id.* at 1136 n.3.

narrow distinction between the actual facts of *Ramirez-Ferrer* and what could have happened to constitute importation under § 952(a).<sup>189</sup> The court determined that while a shipment of drugs merely traversing international waters was insufficient to constitute importation, if the defendants' had carried the drugs from Mona Island into another sovereign nation and then into Puerto Rico, a violation would have been found.<sup>190</sup>

The majority seemed to imply that if the defendants had merely stopped to refuel their vessel in a foreign port it would suddenly transform the journey from mere transportation into importation. It is unlikely that Congress contemplated such an inconsistent application of the statute. Moreover, this undermines the majority's response to the government's contention that by focusing on the origin of the drugs, too great a burden will be placed on the prosecution in the case. The majority reasoned that when the origin of the drugs is unknown, then the origin can be presumed to be from a place outside the United States.<sup>191</sup> In the case of stopping in a foreign port, the drugs could therefore be known to have originated in a domestic territory, but by a mere happenstance of entering foreign "soil" the origin becomes insignificant in determining the result of prosecution. This would be within the grasp of Congressional intent no more than arresting the everyday fisherman who travels beyond the twelve mile point at sea and returns, all-the-while possessing drugs for personal (although no less illegal) use.

The *Ramirez-Ferrer* court also stated that the government's approach under § 952(a) would lead to "ludicrous" results.<sup>192</sup> It is the majority, however, who trivialized the issue by framing inappropriate hypothetical situations against the background of the government's and the dissent's interpretation of § 952(a).<sup>193</sup> As the dissent pointed out, the government had not "abused the statute by

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<sup>189</sup> See *id.* at 1136.

<sup>190</sup> See *id.*

<sup>191</sup> See *id.*

<sup>192</sup> *Id.* at 1142.

<sup>193</sup> See, e.g., *id.* ("A maritime worker traveling to and from an oil rig on international waters in the Gulf of Mexico off Louisiana, or on George's Bank off New England, would be . . . exposed" to importation charges if he had drugs in his possession.").



applying it to trivial amounts for personal use . . . .”<sup>194</sup> The majority’s distinction serves no purpose in the effective application of the statute, further complicating the government’s effort to prosecute criminals, resulting in judicial inefficiency and wasted resources.

In fact, the court’s holding raises serious questions as to how § 952 should be enforced in the future. First, why would it be importation if an individual merely stepped foot on foreign soil (even accidentally) and reentered the United States with the same drugs he had before leaving, but it not be importation if the same individual departed United States waters to later re-enter them from international waters?<sup>195</sup> The result reached by the majority places the focus of the statute—and therefore that of the prosecutors and courts applying it—on the origin of the drugs by distinguishing between soil and water. As such, an individual would likely be in violation of the majority’s reading of § 952 if she carried drugs from Alaska, across land through Canada, and into the United States. The same individual would not, however, be subject to § 952 if she transported the same drugs by boat from Alaska into the United States (even assuming she crossed through international waters to do so).

Second, how, in the eyes of the dissent, is it importation for a boat to cross international waters in a non-stop shipment of drugs between two United States points (i.e. Florida to Texas), but it is questionable whether a non-stop flight between the same two United States points would be? The conflict created here may easily be resolved by the wary drug trafficker: she will merely transport her shipments via the airways in the future.

Third, how can the majority justify a presumption of importation when the origin of the drug shipment is unknown, or

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<sup>194</sup> *Id.* at 1148 (Boudin, J., dissenting). The dissent highlighted that § 952(a) has only been applied in cases of “major drug shipments arriving from international waters or international airspace.” *Id.* (Boudin, J., dissenting). Furthermore, the dissent stated that it has been upheld in every reported case. *See id.* (Boudin, J., dissenting).

<sup>195</sup> The majority stated, “we are not faced with a factual situation in which a defendant leaves United States domestic territory empty-handed, proceeds to international waters or to a foreign territory to acquire contraband there, and then returns to domestic territory with this contraband.” *Id.* Under such circumstances, the government’s interpretation of international waters as a “place” from which the drugs are imported becomes more convincing. *See id.*

transform a transportation of drugs into importation by the mere happenstance of coming into contact with foreign soil, while insisting that transportation over international sea or air routes (in many cases the only method of entering the United States) is not importation? Under this result, a potential for circumventing the statutory prohibition arises where no loopholes existed. Namely, now the shrewd smuggler can alter her transit routes and increase the number of hand-offs to other carriers to render a finding of origin impossible and, thereby, avoid importation charges.<sup>196</sup> After all, it was the majority who gave the defendant the power to defeat an importation charge by affirmatively demonstrating the drugs came from within the United States.<sup>197</sup>

It was also the majority who stated that if an unreasonable result is reached by an alternative reading of a statute, that interpretation should be rejected in favor of a more reasonable result.<sup>198</sup> Unlike the precedent, the court in *Ramirez-Ferrer* applied reasoning that lead to further uncertainty; therefore, is it an unreasonable result that should be avoided for a more reasonable one? If so, does the precedent's consistent application of § 952(a) lead to a decisive and easily calculable result that should be universally adopted?<sup>199</sup>

## V. Conclusion

Although the majority in *Ramirez-Ferrer* laid out extensive reasoning with detailed statutory interpretation, the court's interpretation of the statute does not account for the result reached by precedent, nor the intent (implied or otherwise) of Congress.

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<sup>196</sup> See Michael J. Gardner, *Maritime Drug Smuggling Conspiracies: Criminal Liability for Importation and Distribution*, 27 WM. & MARY L. REV. 217 (1985). "Because drug smuggling organizations respond to changes in the law that minimize the risk of conviction, the [different interpretation reached by the First Circuit court in *Ramirez-Ferrer*] may encourage smugglers to ply their trade in the area where the risks are less severe." *Id.* at 218-219.

<sup>197</sup> See *Ramirez-Ferrer*, 82 F.3d at 1144.

<sup>198</sup> See *id.* at 1143 (quoting *United States v. Bayko*, 774 F.2d 516 (1st Cir. 1985)).

<sup>199</sup> The recent denial of certiorari by the United States Supreme Court would appear to be a missed opportunity to answer this question. See *Ramirez-Ferrer*, 82 F.3d 1131 (1st Cir. 1996) (en banc), *cert. denied*, 65 U.S.L.W. 3341 (U.S. Nov. 5, 1996) (No. 96-6134). It may now be up to Congress to resolve this issue through an amendment and further clarification of their intent.

By its mechanical dismissal of the precedent as dicta or without reasoning, the court gives no consideration to the fact that four other circuits have interpreted § 952(a) to apply under analogous circumstances as those before the First Circuit in *Ramirez-Ferrer*. Finally, the majority in *Ramirez-Ferrer* based its decision partially on the lack of legislative history and historical application (as they interpreted it) of § 952, despite precedent that would clearly have justified an opposite finding.

One of the most effective ways the government can respond to drug trafficking is through severe penalties. Although the penalties for illegal importation of drugs under § 952(a) are the same as those for a conviction of possession with intent to distribute illegal drugs under 21 U.S.C. § 841(a),<sup>200</sup> consecutive sentences can still be imposed.<sup>201</sup> As a result, a conviction for importation of controlled substances can carry a much stiffer penalty when combined with a conviction for possession with intent to distribute. Broadly construed, § 952(a) could, therefore, help to slow the flow of illegal drugs into the United States.

In order to provide a clearer and more consistent approach for determining the applicability of § 952(a) in factual scenarios like that of *Ramirez-Ferrer*, Congress should amend the Controlled Substances Import and Export Act to provide a more precise definition of importation. Otherwise, the First Circuit's decision in *Ramirez-Ferrer* may lead to an unnecessarily narrow interpretation of § 952(a). Such a result could ultimately put out of commission an effective weapon in the United States "war on drugs."

WAYNE K. MAIORANO

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<sup>200</sup> Compare 21 U.S.C. § 960(b) (1994) (describing the penalties for violations of § 952) with 21 U.S.C. § 841(b) (1994) (describing the penalties for violations of § 841(a)).

<sup>201</sup> See *Albernaz v. United States*, 450 U.S. 333 (1981) (upholding defendants' consecutive sentences for convictions of conspiracy to import marijuana and conspiracy to distribute marijuana); see also *United States v. Ortiz-Alarcon*, 917 F.2d 651 (1st Cir. 1990) (holding conviction and sentencing for both importation of drugs and possession with intent to distribute does not violate double jeopardy clause because the crimes are distinct and require different proof for conviction), *cert. denied*, 500 U.S. 926 (1991); *United States v. Dubrofsky*, 581 F.2d 208 (9th Cir. 1978) (holding consecutive sentences for importation of drugs and possession of drugs with intent to distribute was within discretion of trial judge and properly imposed).

